

304.3-725 Completion and review of beta test -- Issuance of extended no-action letter or notice declining to issue extended letter -- Safe harbor of extended letter -- Use of innovation and conduct permitted -- Hearing -- Publication of extended letter on department's Web site.

- (1)
 - (a) Within sixty (60) days of completion of the beta test, unless the time period is extended up to thirty (30) days upon notice from the commissioner, the commissioner shall issue an extended no-action letter or a notice declining to issue an extended no-action letter.
 - (b) The participant may continue to employ the insurance innovation pursuant to the terms and conditions of the limited letter during the period between the completion of the beta test and the issuance of either an extended no-action letter or a notice declining to issue an extended no-action letter.
- (2) The commissioner shall review the results of the beta test to determine whether the innovation satisfies the following requirements:
 - (a) The data presented demonstrates that the innovation's utility was meritorious of an extension;
 - (b) Regulatory and statutory barriers prevent continued use of the innovation within this Commonwealth;
 - (c) The innovation provided a benefit to Kentucky consumers; and
 - (d) The issuance of an extended no-action letter:
 1. Presents no risk of unreasonable harm to consumers or the marketplace; and
 2. Serves the public interest.
- (3) Upon review of the results of the beta test, the commissioner shall, in his or her discretion, issue one (1) of the following:
 - (a) If the commissioner determines that the innovation fails to satisfy any of the requirements under subsection (2) of this section, he or she shall:
 1. Issue a notice declining to issue an extended no-action letter;
 2. Describe in the notice the reasons for the declination;
 3. Notify the participant for the innovation of the notice; and
 4. Publish the notice on the department's Web site; or
 - (b) If the commissioner determines that the innovation satisfies the requirements under subsection (2) of this section, he or she shall issue an extended no-action letter. An extended no-action letter issued by the commissioner shall include:
 1. A description of the insurance innovation and the specific conduct permitted by the extended letter in sufficient detail to enable any person to use the innovation or a product, process, method, or procedure not substantially different from the innovation within the safe harbor of the extended letter;
 2. Notice of any certificate of authority, license, or permit the

commissioner determines is necessary to use, sell, or license the innovation, or make the innovation available, in this Commonwealth;

3. An expiration date not greater than three (3) years following the date of issuance;
 4. Notice that the extended no-action letter may:
 - a. Only be modified by:
 - i. Promulgation of an administrative regulation, if the safe harbor addresses a requirement established by administrative regulation; or
 - ii. An act of the General Assembly; and
 - b. Be rescinded prior to its expiration if the commissioner receives complaints and determines continued activity poses a risk of harm to consumers;
 5. Clarification of required procedures related to the issuance and cancellation of any policies of insurance, if applicable, due to the expiration period; and
 6. Notice that, upon expiration, all persons relying on the extended no-action letter shall cease and desist operations related to the innovation unless changes have been made to Kentucky law to permit the innovation by:
 - a. The promulgation of an administrative regulation, if the safe harbor address a requirement established by administrative regulation; or
 - b. An act of the General Assembly.
- (4) A hearing on a notice of declination may be requested in accordance with KRS 304.2-310.
- (5) An extended no-action letter issued by the commissioner pursuant to this section shall be:
- (a) Exempt from the application of KRS 13A.130; and
 - (b) Published on the department's Web site.

Effective: June 27, 2019

History: Created 2019 Ky. Acts ch. 147, sec. 6, effective June 27, 2019.